



## *COMMONWEALTH of VIRGINIA*

DEPARTMENT OF ENVIRONMENTAL QUALITY  
NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193  
(703) 583-3800  
[www.deq.virginia.gov](http://www.deq.virginia.gov)

Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Thomas A. Faha  
Regional Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
ZAYO GROUP, LLC  
FOR  
THE ZAYO GROUP FACILITY  
Registration No. 73743**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Zayo Group, LLC, regarding the Zayo Group Facility for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Facility" means the Zayo Group, LLC Facility, located at 21635 Red Rum Drive in Ashburn, Virginia.
5. "FCE" means a full compliance evaluation by DEQ staff.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "Permit" means a New Source Review permit to construct and operate emergency generators which was issued under the Virginia Air Pollution Control Law and the Regulations to Latisys-Ashburn, LLC on September 28, 2012. On November 21, 2016, DEQ received a change of ownership notification that stated Zayo Group, LLC had become the owner of the Facility effective February 23, 2015.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
11. "Zayo Group" means Zayo Group, LLC a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Zayo Group, LLC is a "person" within the meaning of Va. Code § 10.1-1300.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Zayo Group owns and operates the Facility in Ashburn, Virginia located in Loudoun County. The Facility is an office building with emergency generators. The Facility is the subject of the Permit which allows Zayo Group to construct and operate ten diesel engine-driven emergency generators.

2. On December 12, 2016, Department staff conducted an FCE of the Facility in Ashburn, Virginia for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:
  - a. After a review of Facility files, DEQ staff noted that Zayo Group did not submit notifications of installation, anticipated date of manufacturer's trials, or the notification of the anticipated date of start-up for the most recent installation of engine generator 2C (S/N: SFJ00908).
  - b. Zayo Group personnel informed DEQ staff that engine generator 2C was installed after Zayo Group purchased the Facility. The approximate date of installation provided for this engine generator was October 2016, and occurred approximately 53 months after the most recent engine generator installation(s) by Latisys, the previous owner, which occurred on May 8, 2012.
  - c. After a review of Facility files, DEQ noted that Zayo Group did not submit notification that it participates in an Emergency Load Response Program (ELRP) within 30 days of entering into this contract.
3. 9 VAC 5-50-50.A states in relevant part that any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board of the following:
  1. The date of commencement of construction, reconstruction or modification of a new or modified source postmarked no later than 30 days after such date.
  2. The anticipated date of initial startup of a new or modified source postmarked not more than 60 days nor less than 30 days prior to such date.
  3. The actual date of initial startup of a new or modified source postmarked within 15 days after such date.
4. 9 VAC 5-80-1120.A states that no owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit.
5. Permit Condition 5.a.ii ISO-Declared Emergency states in relevant part that the engine-generator sets (Ref. Nos. EG 1 to EG 10) may be operated for participation in an Independent System Operator's (ISO) Emergency Load Response Program (ELRP) during times of an ISO-declared emergency, as defined in the ISO's emergency operations manual. Operations under this scenario shall not exceed 60 hours per generator each calendar year. The permittee shall submit notification to the Regional Air Permit Manager of the DEQ's Northern Regional Office (NRO) within thirty days of signing a contract to participate in the ELRP.

6. On January 19, 2017, based on the observations noted during the FCE, the Department issued Notice of Violation No. ANRO000571 to Zayo Group, LLC for the violations described in paragraphs C(1) through C(5), above.
7. Based on the results of December 12, 2016 FCE, the Board concludes that Zayo Group has violated Permit Conditions 5.a.ii, 9 VAC 5-50-50.A, and 9 VAC 5-80-1120.A, as described in paragraphs C(1) through C(5), above.
8. Zayo Group submitted a permit application to DEQ which was received on February 3, 2017, that requests a permit modification that would resolve the aforementioned violations. A permit was issued to Zayo on May 18, 2017 that resolves the aforementioned violations.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Zayo Group, LLC, and Zayo Group, LLC agrees to pay a civil charge of \$5,765.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Zayo Group, LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Zayo Group, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Zayo Group, LLC for good cause shown by Zayo Group, LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Zayo Group, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Zayo Group, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Zayo Group, LLC declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Zayo Group, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Zayo Group, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Zayo Group, LLC Corporation shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Zayo Group, LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Zayo Group, LLC. Nevertheless, Zayo Group, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Zayo Group, LLC has completed all of the requirements of the Order;
  - b. Zayo Group, LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Zayo Group, LLC.

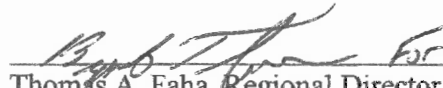
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Zayo Group, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Zayo Group, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Zayo Group, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Zayo Group, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Zayo Group, LLC.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Zayo Group, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 31<sup>st</sup> day of August, 2017.

  
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Thomas A. Faha, Regional Director  
Department of Environmental Quality

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Zayo Group, LLC voluntarily agrees to the issuance of this Order.

Date: 8/30/17 By: [Signature], General Counsel Colocation  
(Person) (Title)  
[Zayo Group, LLC]

State of Colorado  
~~Commonwealth of Virginia~~  
City/County of Denver

The foregoing document was signed and acknowledged before me this 30<sup>th</sup> day of August, 2017, by Dan Yamagishi who is Associate General Counsel of Zayo Group, LLC, on behalf of the company.

[Signature]  
Notary Public

20174034024

Registration No.

My commission expires: 08-14-2021

Notary seal:

